

ASSEMBLY, No. 136

STATE OF NEW JERSEY

215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

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District 13 (Monmouth)

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District 13 (Monmouth)

SYNOPSIS

Establishes the “New Jersey Right to Work Act”; prohibits payroll deduction of union dues from wages or salaries of public employees.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning labor organization membership and dues,
2 revising various parts of the statutory law and supplementing
3 Title 34 of the Revised Statutes.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. Sections 1 through 9 of this act shall be known and may be
9 cited as the “New Jersey Right to Work Act.”

10
11 2. The Legislature finds and declares that:

12 a. The right to work is inherent in the right to live. Article I of
13 the New Jersey State Constitution states that individuals are born
14 with certain unalienable rights, including the right to life and
15 liberty, and acquiring, possessing, and protecting property, and of
16 pursuing and obtaining safety and happiness;

17 b. Public and private sector labor organizations enter into many
18 governmental, business and industrial enterprises in the State,
19 thereby affecting the social and economic conditions of its
20 citizenry. In order to foster a climate that encourages economic
21 growth and individual liberty, workers in this State should possess
22 the freedom to associate, the ability to self-organize and the right to
23 refrain from such activities as they so choose. The economic liberty
24 of New Jersey’s citizens should not be infringed by an employer
25 who requires employees either to become members of a labor
26 organization or financially support a labor organization as non-
27 members; and

28 c. Therefore, it is necessary and appropriate, in light of these
29 findings, and with the intention of transforming them into action, to
30 enact legislation setting forth a comprehensive approach to the
31 protection of the intrinsic freedom of choice in an individual’s
32 pursuit of employment. The workers of this State must be protected
33 in their right to join or assist a labor union, financially or otherwise,
34 or to refrain from such activities, without threats or the fear of
35 penalties or reprisals concerning their actions.

36
37 3. For the purposes of this act:

38 “Employer” means an employer and any person acting, directly
39 or indirectly, on behalf of or in the interest of an employer with the
40 employer's knowledge or ratification, but a labor organization, or
41 any officer or agent thereof, shall be considered an employer only
42 with respect to individuals employed by such organization. This
43 term shall include "public employers" including the State of New
44 Jersey, and any political subdivision of the State, school district,

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 special district, and any authority, commission, board, branch or
2 agency of the State, political subdivision or district.

3 "Labor organization" means an agency, employee representation
4 committee, group, association, plan, or organization of any kind in
5 which employees participate and which exists for the purpose, in
6 whole or in part, of dealing with employers concerning grievances,
7 labor disputes, wages, rates of pay, hours, or other terms or
8 conditions of employment.

9
10 4. No person in the employ of any employer shall be required
11 as a condition of employment or continuation of employment to:

12 a. Become or remain a member of a labor organization;

13 b. Resign or refrain from voluntary membership in, voluntary
14 affiliation with, or voluntary financial support of a labor
15 organization;

16 c. Pay any dues, fees, assessments, or other charges of any kind
17 or amount to a labor organization;

18 d. Pay any charity or other third party any amount in lieu of
19 paying dues, fees, assessments, or other charges to a labor
20 organization; or

21 e. Be recommended, approved, referred, or cleared by or
22 through a labor organization.

23
24 5. Any contract entered into on or after the effective date of
25 this act between any labor organization and employer which
26 violates section 4 of this act shall be null and void. The provisions
27 of section 4 of this act shall not apply to any existing contract, but
28 shall apply to any renewal or extensions of any existing contract on
29 or after the effective date of this act.

30
31 6. Every employer shall post and keep continuously displayed
32 the following notice, printed in at least 10-point bold-faced type, at
33 a place or places in the place of business, establishment, or
34 premises where it may be readily seen by all employees, and it shall
35 be the further duty of every employer to furnish a copy of that
36 notice to each employee at the time the employee is hired:

37 38 EMPLOYEE FREEDOM OF CHOICE

39
40 Under the "New Jersey Right to Work Act," P.L. , c. (C.)
41 (pending before the Legislature as this bill), employees are
42 protected in the exercise of their free choice to join or refrain from
43 joining labor unions, and it is unlawful for an employer and a labor
44 union to enter into a contract or agreement requiring employees to
45 pay dues, fees, or charges of any kind to a labor organization as a
46 condition of obtaining or keeping a job. Under the "New Jersey
47 Right to Work Act," an employer may not discharge or otherwise

1 discriminate against an employee because of joining or refusing to
2 join a labor organization, or to pay dues or other charges to a labor
3 organization.
4

5 7. a. It shall be unlawful for any person, labor organization or
6 labor organization's officer, agent or member, or employer or
7 employer's agent, representative or designee, to threaten,
8 intimidate, coerce, or use force against an individual exercising his
9 rights provided under this act.

10 b. Any person, labor organization or officer, agent or member
11 thereof, or employer or employer's agent, representative or
12 designee who violates subsection a. of this section shall be subject
13 to a civil penalty in an amount not to exceed \$1,000 for the first
14 violation and an amount not to exceed \$5,000 for each subsequent
15 violation, collectible by the Commissioner of Labor and Workforce
16 Development in a summary proceeding pursuant to the "Penalty
17 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
18

19 8. Upon a violation of any provision of this act, an aggrieved
20 person may institute a civil action in a court of competent
21 jurisdiction, within one year from the date of the alleged violation,
22 for relief as follows:

23 a. With respect to a prospective employee, the court may:
24 (1) order injunctive relief as it deems appropriate;
25 (2) award compensatory and consequential damages incurred by
26 the prospective employee as a result of the violation; or
27 (3) award reasonable attorneys' fees and court costs.

28 b. With respect to an employee or former employee, the court
29 may:

30 (1) order injunctive relief as it deems appropriate, including
31 reinstatement of the employee to the same position held before the
32 violation or the position the employee would have held but for the
33 violation, as well as the reinstatement of full fringe benefits and
34 seniority rights;

35 (2) award compensatory and consequential damages incurred by
36 the employee or former employee as a result of the violation,
37 including compensation for lost wages, benefits and other
38 remuneration; or

39 (3) award reasonable attorneys' fees and court costs.
40

41 9. The provisions of this act shall not apply to:

42 a. Employers and employees covered by the federal "Railway
43 Labor Act," (45 U.S.C. s.151 et seq.);

44 b. Federal employers and employees; or

45 c. Employers and employees on exclusive federal enclaves.

1 10. Section 4 of P.L.1965, c.173 (C.34:11-4.4) is amended to
2 read as follows:

3 4. No employer may withhold or divert any portion of an
4 employee's wages unless:

5 a. The employer is required or **【empowered】** has express
6 authorization to do so by New Jersey or United States law; or

7 b. The amounts withheld or diverted are for:

8 (1) Contributions authorized either in writing by employees, or
9 under a collective bargaining agreement, to employee welfare,
10 insurance, hospitalization, medical or surgical or both, pension,
11 retirement, and profit-sharing plans, and to plans establishing
12 individual retirement annuities on a group or individual basis, as
13 defined by section 408 (b) of the federal Internal Revenue Code of
14 1986 (26 U.S.C.s.408(b)), or individual retirement accounts at any
15 State or federally chartered bank, savings bank, or savings and loan
16 association, as defined by section 408 (a) of the federal Internal
17 Revenue Code of 1986 (26 U.S.C.s.408(a)), for the employee, his
18 spouse or both.

19 (2) Contributions authorized either in writing by employees, or
20 under a collective bargaining agreement, for payment into
21 company-operated thrift plans; or security option or security
22 purchase plans to buy securities of the employing corporation, an
23 affiliated corporation, or other corporations at market price or less,
24 provided such securities are listed on a stock exchange or are
25 marketable over the counter.

26 (3) Payments authorized by employees for payment into
27 employee personal savings accounts, such as payments to a credit
28 union, savings fund society, savings and loan or building and loan
29 association; and payments to banks for Christmas, vacation, or other
30 savings funds; provided all such deductions are approved by the
31 employer.

32 (4) Payments for company products purchased in accordance
33 with a periodic payment schedule contained in the original purchase
34 agreement; payments for employer loans to employees, in
35 accordance with a periodic payment schedule contained in the
36 original loan agreement; payments for safety equipment; payments
37 for the purchase of United States Government bonds; payments to
38 correct payroll errors; and payments of costs and related fees for the
39 replacement of employee identification, which is used to allow
40 employees access to sterile or secured areas of airports, in
41 accordance with a fee schedule described in any airline media plan
42 approved by the federal Transportation Security Administration;
43 provided all such deductions are approved by the employer.

44 (5) Contributions authorized by employees for organized and
45 generally recognized charities; provided the deductions for such
46 contributions are approved by the employer.

1 (6) Payments authorized by employees or their collective
2 bargaining agents for the rental of work clothing or uniforms or for
3 the laundering or dry cleaning of work clothing or uniforms;
4 provided the deductions for such payments are approved by the
5 employer.

6 (7) Labor organization dues and initiation fees, and such other
7 labor organization charges permitted by law, except that after
8 December 31, 2011, no public employer, as defined in section 3 of
9 P.L. , c. (C.) (pending before the Legislature as this bill), may
10 withhold or divert any portion of any public employee's wages for
11 labor organization dues and initiation fees, or any other labor
12 organization charges.

13 (8) Contributions authorized in writing by employees, pursuant
14 to a collective bargaining agreement, to a political committee,
15 continuing political committee, or both, as defined in section 3 of
16 P.L.1973, c.83 (C.19:44A-3), established by the employees' labor
17 union for the purpose of making contributions to aid or promote the
18 nomination, election or defeat of any candidate for a public office
19 of the State or of a county, municipality or school district or the
20 passage or defeat of any public question, subject to the conditions
21 specified in section 2 of P.L.1991, c.190 (C.34:11-4.4a); except
22 that, with respect to those public employees excluded in paragraph
23 (7) of this subsection b., no contribution shall be withheld or
24 diverted from that employee's wages for the purposes set out in this
25 paragraph (8).

26 (9) Contributions authorized in writing by employees to any
27 political committee or continuing political committee, other than a
28 committee provided for in paragraph (8) of this subsection, for the
29 purpose of making contributions to aid or promote the nomination,
30 election or defeat of any candidate for a public office of the State or
31 of a county, municipality or school district or the passage or defeat
32 of any public question, subject to the conditions specified in section
33 2 of P.L.1991, c.190 (C.34:11-4.4a); in making a payroll deduction
34 pursuant to this paragraph the administrative expenses incurred by
35 the employer shall be borne by such committee, at the option of the
36 employer; except that, with respect to those public employees
37 excluded in paragraph (7) of this subsection b., no contribution shall
38 be withheld or diverted from that employee's wages for the
39 purposes set out in this paragraph (9).

40 (10) Payments authorized by employees for employer-sponsored
41 programs for the purchase of insurance or annuities on a group or
42 individual basis, if otherwise permitted by law.

43 (11) Such other contributions, deductions and payments as the
44 Commissioner of Labor and Workforce Development may authorize
45 by regulation as proper and in conformity with the intent and

1 purpose of this act, if such deductions are approved by the
2 employer.

3 (cf: P.L.2009, c.226, s.1)

4
5 11. Sections 2 through 6 of P.L.1979, c.477 (C.34:13A-5.5
6 through C.34:13A-5.9) are repealed.

7
8 12. This act shall take effect January 1, 2012.

9
10
11 STATEMENT

12
13 This bill establishes New Jersey as a “Right to Work” state by
14 protecting all employees in the exercise of joining or refusing to
15 join a labor organization. The bill prohibits employers and labor
16 organizations from requiring employees to become or remain
17 members of a labor organization, and to pay dues, fees or other
18 charges to the labor organization, as a condition of employment or
19 continued employment. Under this bill, any contract entered into on
20 or after January 1, 2012, between any labor organization and
21 employer which requires, as a condition of employment or
22 continued employment, that an employee affiliate with, or pay dues,
23 fees or other charges to, a labor organization shall be null and void.

24 The bill defines the term “employer” to include both private
25 sector and public sector employers for purposes of the protections
26 afforded under this bill. The bill also defines “labor organization”
27 as an agency, employee representation committee, group,
28 association, plan, or organization of any kind in which employees
29 participate and which exists for the purpose, in whole or in part, of
30 dealing with employers concerning grievances, labor disputes,
31 wages, rates of pay, hours, or other terms or conditions of
32 employment.

33 The bill requires all employers to post and keep continuously
34 displayed a notice, printed in at least 10-point bold-faced type, at a
35 place or places in the place of business, establishment, or premises
36 where it may be readily seen by all employees, and to furnish a
37 copy of that notice to all employees upon hiring, that informs the
38 employees of their rights under the provisions of this bill.

39 The bill prohibits any person, labor organization or labor
40 organization’s officer, agent or member thereof, or employer or
41 employer’s agent, representative or designee from using threats,
42 intimidation, coercion, or the use of force against an individual
43 exercising his rights provided under the bill. The bill provides for
44 the imposition of civil penalties, for those who use threats,
45 intimidation, coercion, or force, in an amount not to exceed \$1,000
46 for the first violation and an amount not to exceed \$5,000 for each
47 subsequent violation, collectible by the Commissioner of Labor and

1 Workforce Development. Also, upon a violation of any provision of
2 the bill, an aggrieved person may institute a civil action in a court
3 of competent jurisdiction, within one year from the date of the
4 alleged violation.

5 The bill also specifies that the provisions of the bill do not apply
6 to the following:

7 (1) employers and employees covered by the federal "Railway
8 Labor Act," (45 U.S.C. s.151 et seq.);

9 (2) federal employers and employees; or

10 (3) employers and employees on exclusive federal enclaves.

11 The bill amends section 4 of P.L.1965, c.173 (C.34:11-4.4) and
12 repeals sections 2 through 6 of P.L.1979, c.477 (C.34:13A-5.5
13 through C.34:13A-5.9) to:

14 (1) prohibit a public employer of public employees in a
15 collective negotiating unit from withholding or diverting union dues
16 by payroll deduction from the wages or salaries of the public
17 employees;

18 (2) prohibit a public employer of public employees in a
19 negotiating unit from withholding or diverting a representation fee
20 in lieu of dues by payroll deduction from the wages or salaries of
21 nonmember public employees in the unit; and

22 (3) prohibit a public employer of public employees from
23 withholding or diverting contributions to a political action
24 committee from the wages or salaries of the public employees.

25 Currently, State law permits all employers to withhold or divert
26 portions of an employee's wages for purposes of paying labor
27 organization dues, initiation fees, and other labor organization
28 charges permitted by law. The law also provides that all employers
29 may withhold or divert contributions to political action committees
30 from the wages or salaries of employees.

31 Furthermore, the majority representative and the public employer
32 of public employees in a collective negotiating unit may negotiate
33 an agreement that entitles the majority representative to receive
34 payment, by payroll deduction from the wages or salaries of the
35 nonmember employees, of a representation fee in lieu of dues for
36 services rendered by the majority representative. The representation
37 fee in lieu of dues in no event may exceed 85% of the regular
38 membership dues, fees, and assessments charged by the majority
39 representative.

40 By amending section 4 of P.L.1965, c.173 (C.34:11-4.4) and
41 repealing sections 2 through 6 of P.L.1979, c.477 (C.34:13A-5.5
42 through C.34:13A-5.9), this bill will prohibit a public employer of
43 public employees from withholding or diverting a portion of the
44 wages or salaries of employees for purposes of paying union dues,
45 initiation fees, and other labor organization charges permitted by
46 law, for contributions to political action committees, or for a
47 representation fee in lieu of dues.